

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 19 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

WILLIAM J. MOUREN FARMING,
INC.; et al.,

Plaintiffs - Appellees,

v.

AGRI-PRODUCERS TRUST, a/k/a
Southern California Manufacturers and
Producers' League VEBA; et al.,

Defendants,

and

DSM INCORPORATED; et al.,

Defendants - Appellants.

No. 04-56624

D.C. No. CV-02-04952-ABC

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Audrey B. Collins, District Judge, Presiding

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Submitted June 9, 2006**
Pasadena, California

Before: D.W. NELSON, RAWLINSON, and BEA, Circuit Judges.

The defendants appeal the district court's decision awarding summary judgment for the plaintiffs on their conversion claim. Our standard of review is de novo. *See Triton Energy Corp. v. Square D. Co.*, 68 F.3d 1216, 1220 (9th Cir. 1995). We affirm.

The record contains not even a scintilla of evidence that the disputed funds belonged to an entity or person other than the plaintiffs. Whether the Mouren Plan was "out of compliance" is irrelevant to the ownership issue. Neither *Booth v. Commissioner*, 108 T.C. 524 (1997), nor *Neonatology Associates, P.A. v. Commissioner*, 299 F.3d 221 (3d Cir. 2002), bears on the ownership issue. The plaintiffs were entitled to judgment on their conversion claim as a matter of law. *See* Fed. R. Civ. Pro. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).

AFFIRMED.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).